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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,420	04/22/2002	Thomas L. Toth	GEMS8081.115	2764
27061	7590	11/27/2007	EXAMINER	
ZIOLKOWSKI PATENT SOLUTIONS GROUP, SC (GEMS)			RAMIREZ, JOHN FERNANDO	
136 S WISCONSIN ST			ART UNIT	PAPER NUMBER
PORT WASHINGTON, WI 53074			3737	
NOTIFICATION DATE		DELIVERY MODE		
11/27/2007		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

info@zpspatents.com  
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<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/063,420	TOTH ET AL.
	Examiner	Art Unit
	John F. Ramirez	3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 23 August 2007.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-55 is/are pending in the application.

4a) Of the above claim(s) 1-24 and 49-55 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 25-48 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) Paper No(s)/Mail Date. \_\_\_\_\_  
3) Information Disclosure Statement(s) (PTO/SB/08) 5) Notice of Informal Patent Application  
Paper No(s)/Mail Date. \_\_\_\_\_ 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's election with traverse of Invention II corresponding to claims 25-40 in the reply August 23, 2007 is acknowledged. The traversal is on the ground(s) that as indicated in the restriction requirement, inventions I, II, III, and IV are unrelated and that in the instant case, the inventions are not capable of use together and they have different designs, modes of operation, and effects. Also applicant alleges that the examiner has set forth contradictory bases for restriction by comparing Inventions II and III and inventions II and IV are related as combination and subcombination. However, the examiner of record would like to clarify that the unrelated inventions are groups [I, II] and [III, IV].

Furthermore, invention I is independent or distinct and is not capable of use together and has different designs, modes of operation, and effects. For example, invention I is drawn to a method of diagnostic imaging, invention II is drawn to a radiation imaging system, and invention III is drawn to a computer readable storage medium. This is not found persuasive because the fact that claim 1 performs a diagnostic imaging procedure, and since the claims limitations of "a radiation emitting system" and "a computer storage medium" are not located in the body of the claim or in the preamble. The examiner interprets such claim disclosure as merely a method of diagnostic imaging.

The requirement is still deemed proper and is therefore made FINAL.

However, in relation to comparing inventions II and III are related as combination and subcombination. Applicant has elected to amend claim 26 to further clarify the invention and such amendment renders moot the basis for the imposed restriction.

Claims 1-24 are withdrawn and claims 49-55 have been canceled from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 23, 2007.

Therefore, upon further consideration, the following new office action is provided to better indicate the different inventions and species being claimed in order to expedite the prosecution of this application.

#### ***Election/Restrictions***

This application contains claims directed to the following patentably distinct species:

#### **Figures 5, 6, 7 and 8 respectively.**

The species are independent or distinct because the applicant expressly states on pages 5 and 6 of the specifications that Fig. 5 is a perspective view of one embodiment of a dynamic filter in accordance with the present invention, Fig. 6 is a perspective view of another embodiment of a dynamic filter in accordance with the present invention, Fig. 7 is a perspective view of another embodiment of a dynamic filter in accordance with the present invention, and Fig. 8 is a perspective view of another embodiment of a dynamic filter in accordance with the present invention.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F. Ramirez whose telephone number is (571) 272-8685. The examiner can normally be reached on (Mon-Fri) 7:00 - 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JFR

*Bonnie  
Brown Lester  
SPB 3737*